

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge
November 19, 2010

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

Re: SOAH Docket No. 582-08-0689; TCEQ Docket No. 2006-1819-WR; In Re:
Application of the Lower Colorado River Authority for Water Rights Permit
No. 5731 to Divert, Store, and Use Water from the Colorado River Basin

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than **December 9, 2010**. Any replies to exceptions or briefs must be filed in the same manner no later than **December 20, 2010**.

This matter has been designated **TCEQ Docket No. 2006-1819-WR; SOAH Docket No. 582-08-0689**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in cursive script, reading "William G. Newchurch".

William G. Newchurch
Administrative Law Judge

WGN:nl
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

300 West 15th Street Suite 502

Austin, Texas 78701

Phone: (512) 475-4993

Fax: (512) 322-2061

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: LOWER COLORADO RIVER AUTHORITY

SOAH DOCKET NUMBER: 582-08-0689

REFERRING AGENCY CASE: 2006-1819-WR

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ WILLIAM G. NEWCHURCH**

REPRESENTATIVE / ADDRESS

PARTIES

ROBIN SMITH
STAFF ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
LITIGATION DIVISION
PO BOX 13087
AUSTIN, TX 78711
(512) 239-3400 (PH)
(512) 239-3434 (FAX)

EXECUTIVE DIRECTOR

BLAS J. COY, JR.
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF PUBLIC INTEREST COUNSEL
P.O. BOX 13087, MC-103
AUSTIN, TX 78711-3087
(512) 239-6363 (PH)
(512) 239-6377 (FAX)
bcoy@tceq.state.tx.us

OFFICE OF PUBLIC INTEREST COUNSEL

DOCKET CLERK
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF THE CHIEF CLERK
PO BOX 13087
AUSTIN, TX 78711
(512) 239-3300 (PH)
(512) 239-3311 (FAX)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

ROSS W HENDERSON
STAFF ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
MC-173 P.O. BOX 13087
AUSTIN, TX 78711-3087
(512) 239-6257 (PH)
(512) 239-0606 (FAX)

EXECUTIVE DIRECTOR

DOUG G. CAROOM
ATTORNEY
BICKERSTAFF HEATH DELGADO ACOSTA, LLP
3711 S. MOPAC EXPRESSWAY, BUILDING ONE, SUITE
300
AUSTIN, TX 78746
(512) 472-8021 (PH)
(512) 320-5638 (FAX)

LOWER COLORADO RIVER AUTHORITY

CAROLYN AHRENS
ATTORNEY
515 CONGRESS AVENUE, SUITE 1515
AUSTIN, TX 78701
(512) 472-3263 (PH)
(512) 473-2609 (FAX)

STP NUCLEAR OPERATING CO. (STP)

MARISA PERALES
ATTORNEY AT LAW
LOWERRE, FREDERICK, PERALES, ALLMON &
ROCKWELL
707 RIO GRANDE, SUITE 200
AUSTIN, TX 78701
(512) 469-6000 (PH)
(512) 482-9346 (FAX)
marisa@lf-lawfirm.com

SIERRA CLUB

ROBIN A. MELVIN
401 CONGRESS AVE., SUITE 2200
AUSTIN, TX 78701
(512) 480-5688 (PH)
(512) 480-5888 (FAX)

COASTAL CONSERVATION ASSOCIATION

MARY W CARTER
BLACKBURN CARTER, P.C.
4709 AUSTIN
HOUSTON, TX 77004
(713) 524-1012 (PH)
(713) 524-5165 (FAX)
mcarter@blackburncarter.com

MATAGORDA BAY FOUNDATION

MYRON J. HESS
44 EAST AVENUE, SUITE 200
AUSTIN, TX 78701
(512) 476-9805 (PH)
(512) 476-9810 (FAX)
hess@nwf.org

NATIONAL WILDLIFE FEDERATION

LYN CLANCY
ASSOCIATE GENERAL COUNSEL
P.O. BOX 220
AUSTIN, TX 78767
(512) 473-3378 (PH)
(512) 473-4010 (FAX)

LOWER COLORADO RIVER AUTHORITY

COLETTE BARRON BRADSBY
TEXAS PARKS AND WILDLIFE DEPARTMENT
LEGAL DIVISION
4200 SMITH SCHOOL ROAD
AUSTIN, TX 78744
(512) 389-8899 (PH)
(512) 389-4482 (FAX)
colette.barron@tpwd.state.tx.us

TEXAS PARKS AND WILDLIFE DEPARTMENT (TPWD)

ROSS CROW
301 WEST 2ND STREET BOX 1088
AUSTIN, TX 78767-1088
(512) 974-2159 (PH)
(512) 974-6490 (FAX)
ross.crow@ci.austin.tx.us

CITY OF AUSTIN

BEN F. VAUGHAN III
401 CONGRESS AVE.
AUSTIN, TX 78701
(512) 480-5617 (PH)
(512) 480-5888 (FAX)
bvaughan@gdhw.com

COASTAL CONSERVATION ASSOCIATION

MEITRA FARHADI
ASSISTANT CITY ATTORNEY
CITY OF AUSTIN
P. O. BOX 1088
AUSTIN, TX 78767
(512) 974-2310 (PH)
(512) 974-6490 (FAX)
meitra.farhadi@ci.austin.tx.us

CITY OF AUSTIN

**SOAH DOCKET NO. 582-08-0689
TCEQ DOCKET NO. 2006-1819-WR**

APPLICATION OF THE LOWER	§	BEFORE THE STATE OFFICE
COLORADO RIVER AUTHORITY	§	
FOR WATER RIGHTS PERMIT NO.	§	OF
5731 TO DIVERT, STORE, AND USE	§	
WATER FROM THE COLORADO	§	ADMINISTRATIVE HEARINGS
RIVER BASIN	§	

PROPOSAL FOR DECISION

The Lower Colorado River Authority (LCRA or Applicant) has applied to the Texas Commission on Environmental Quality (TCEQ or Commission) for a permit to divert, store, and use water from the Colorado River Basin (Basin). After jurisdiction was proven, several parties were admitted. The parties have a broad range of interests in the water in the basin, including municipal, industrial, environmental, and wildlife. All of the parties except for the Executive Director (ED) have agreed to a settlement. Those Settling Parties have filed a proposed permit that reflects their agreement (Settlement Draft).¹

The ED does not oppose the Application. In fact, he argues that it should be approved and has prepared a Draft Permit that he contends could be granted.² However, the ED opposes issuance of the Settlement Draft as the permit. He contends that the Draft Permit that he prepared is sufficient and should be issued. Some of the Settling Parties oppose issuance of the ED's Draft Permit.

The Administrative Law Judge (ALJ) recommends that the Commission approve the Application and the Settlement Draft. If the Commission does not wish to approve the non-unanimous settlement, the ALJ recommends that the Commission remand the case to the ALJ for hearing with detailed instructions concerning its policy regarding the incorporation of party agreements into permits.

¹ Exhibit Q, a portion of which is attached to this PFD as Attachment 1.

² Exhibit R, which is attached to this PFD as Attachment 2.

The ED seeks a hearing and argues that LCRA, which has the burden of proof, must show that the additional provisions in the Settlement Draft should be included. However, for the purposes of this proceeding, none of the Settling Parties or OPIC disputes that the Settlement Draft:

- complies with the requirements of the Texas Water Code and the applicable rules of the Commission relating to permits to use state water;
- uses the best science available;
- reflects an appropriate balance under TEXAS WATER CODE § 11.147;
- meets the requirements of TEXAS WATER CODE §§ 11.147, 11.150, and 11.152; and
- is consistent with the goals and policies of the Texas Coastal Management Program.³

Similarly, the ED has not contended that the Settlement Draft would violate any applicable statute or rule. Instead, he claims that it is contrary to Commission policy to include third party agreements in a permit, and that the Settlement Draft's terms would be complicated for the ED to administer. The primary substantive differences between the ED's Draft Permit and the Settlement Draft relate to environmental flow permit conditions developed pursuant to TEXAS WATER CODE §§ 11.147, 11.150, and 11.152. Unlike the Draft Permit, the Settlement Draft also:

- (a) reduces the number of authorized diversion points from nine to five;
- (b) decreases the maximum combined rate of diversion from 40,000 to 10,000 cubic feet per second;
- (c) includes additional water conservation requirements; and
- (d) includes additional off-channel reservoir permitting and construction requirements.

The Settling Parties argue that no provision of the Settlement Draft is outside of the Commission's authority to approve, impose, and enforce. They also claim that they know of no

³ Settling Parties' Proposed Order (Nov. 3, 2010).

Commission policy prohibiting the inclusion in permits of provisions agreed to by parties unless they are in the ED's Draft Permit. Moreover, some of the Settling Parties believe that the additional provisions in the Settlement Draft are necessary, and LCRA has agreed to include them.

The ALJ realizes that issuing a Proposal for Decision (PFD) when no hearing has been held is unconventional; however, the current posture of the case is unconventional. The ALJ has concluded that the most efficient way to proceed is to put the case before the Commission now so that it can either approve the non-unanimous settlement or give the ALJ guidance concerning its policy. The only apparent issue is the ED's claim that the additional provisions in the Settlement Draft are unnecessary and the Commission has a policy of not including such provisions. However, if that is not the Commission's policy and the Commission were instead inclined to approve the settlement, going through a hearing to get to that result would be an expensive and time-consuming exercise.

The Settling Parties are prepared to go to hearing quickly if it were necessary. However, the ED, due to other demands on Staff, asks that the hearing be delayed until June 2011. The other Parties object to such an extensive further delay. In particular, the Commission's sister agency, the Texas Parks and Wildlife Department (TPWD), notes that it has devoted extraordinary resources and time to resolving this dispute and that settlements should be encouraged.

The Application was filed on March 31, 1999, and declared administratively complete on February 28, 2001.⁴ During August and September 2001, the required notices of the Application and the opportunity for a hearing were published in newspapers and mailed to navigation districts and water-right holders in the Basin.⁵ On September 19, 2007, the Commission

⁴ ED Ex. B at Notice of Water Right Application at 2.

⁵ ED Exs. B & D through P.

considered the hearing requests on the application and issued an interim order granting hearing requests and referring the application to SOAH for hearing.⁶ After the required notices of hearing were given,⁷ the ALJ convened the preliminary hearing on December 3, 2007, and set a schedule.

At the request of the parties, the ALJ abated the case beginning on April 25, 2008, to give the parties an opportunity to settle. On July 16, 2010, after two years of negotiations, the Settling Parties, except for OPIC, announced they had reached an agreement to resolve their disputes regarding the application. The case was further abated until September 30, 2010, for the purpose of allowing the parties to meet and determine if the ED and OPIC could support the settlement. OPIC now supports the settlement. After being informed that the ED could not agree to the Settlement Draft, the Settling Parties asked for a prehearing conference to discuss how to proceed. At that conference, on October 27, 2010, the ALJ proposed to issue this PFD, and none of the Settling Parties objected.

The ALJ sees no legal impediment to the Commission's approval of the Settlement Draft at this point without further hearing should it choose to. No party objects to the Commission's jurisdiction. As recited in the attached Proposed Order, the record contains evidence showing that all of the required notices were given and that the Commission has jurisdiction to approve the application.⁸ The ED cannot appeal the Commission's decision.⁹ All other parties support the Settlement Draft; hence, they would have no interest in appealing its approval.

The ALJ recommends that the Commission adopt the attached Proposed Order, approve the application, and issue the permit to LCRA as set out in the attached Settlement Draft. Should the Commission choose not to take that action, the ALJ recommends that the Commission

⁶ ED Ex. A.

⁷ ED Ex. C.

⁸ ED Exs. A through P.

⁹ TEX. WATER CODE ANN. (Water Code) § 5.356.

remand the case to him for further hearing and that the Commission provide the ALJ with guidance concerning its policy on the inclusion of party agreements into a permit.

SIGNED November 19, 2010.

A handwritten signature in black ink, reading "William G. Newchurch". The signature is written in a cursive style with a horizontal line underneath the name.

**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

WATER USE PERMIT
TO APPROPRIATE STATE WATER

APPLICATION NO. 5731

PERMIT NO. 5731

TYPES §§11.121, 11.085

Owner:	Lower Colorado River Authority	Address:	P.O. Box 220 Austin, Texas 78767
Filed:	February 28, 2001	Granted:	
Purpose:	Municipal, Industrial, and Agriculture	Counties:	Colorado, Wharton, Matagorda
Watercourse:	Colorado River	Watershed:	Colorado River Basin

WHEREAS, the Lower Colorado River Authority (LCRA), applicant, seeks authorization to divert, store, and use those excess flood waters and those unappropriated flows of the Colorado River Basin downstream of O.H. Ivie Reservoir and downstream of Lake Brownwood in an amount not to exceed 853,514 acre-feet of water per year; and

WHEREAS, the applicant seeks to divert and use the requested appropriation of water at nine existing diversion points downstream of the USGS Gage (08161000) at Columbus in Colorado County at a maximum combined diversion rate of 40,000 cfs; and

WHEREAS, the applicant seeks to construct an unspecified number of off-channel reservoirs within Colorado, Wharton, and Matagorda Counties with a maximum combined storage capacity of 500,000 acre-feet of water and maximum combined surface area of 25,408 acres; and

WHEREAS, in order to estimate the maximum total surface area of the reservoir, the maximum evaporative losses from the reservoirs, and the maximum total yield from the reservoirs, the applicant indicates that for those purposes assumptions were made that at the maximum normal operating level of the reservoirs the approximate depth of the reservoirs would be no more than 45 feet and no less than 20 feet; and

WHEREAS, the applicant indicates that the estimated combined maximum annual evaporation from the off-channel reservoirs would be 82,264 acre-feet of water, based on a maximum surface area estimated of the reservoirs and assuming an approximate water depth of 20 feet in the reservoirs. The maximum combined annual diversion of water from the off-channel reservoirs would not exceed 327,591 acre-feet of water based on an assumed maximum approximate water depth of 45 feet within the reservoirs, at the maximum normal operating level, with a maximum combined diversion rate from the off-channel reservoirs of 4,000 cfs (1,795,200 gpm). The applicant estimates that the maximum monthly demand from the off-channel reservoirs would be 110,000 acre-feet based on an assumed capability of diverting one third of the annual total of 327,591 acre-feet in a single month; and

WHEREAS, the applicant is seeking authorization to use the water requested in this application anywhere within its authorized water service area within the Colorado, Brazos, Brazos-Colorado, Lavaca, and the Lavaca-Colorado river and coastal basins and/or such other areas that hereinafter may be authorized by law for municipal, industrial, and agricultural purposes; and

WHEREAS, this application is subject to the Texas Coastal Management Program (CMP) and must be consistent with the CMP goals and policies; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, the Executive Director recommends special conditions be added for the protection of instream uses and beneficial inflows; and

WHEREAS, the applicant requests that a special condition be included to address the priority of this right in relation to Colorado River Municipal Water District and Brown County Water Improvement District No. 1 in accordance with LCRA's existing agreements with the districts; and

WHEREAS, the Texas Parks and Wildlife Department, Coastal Conservation Association, Matagorda Bay Foundation, National Wildlife Federation, Sierra Club, STP Nuclear Operating Company, and the City of Austin (collectively the "Protesting Parties") were granted a contested case hearing on the application; and

WHEREAS, as a result of negotiations with the Protesting Parties, applicant has agreed to a reduction in the number of requested authorized diversion points from nine to five diversion points, to a reduction of the requested maximum combined diversion rate from 40,000 cfs to 10,000 cfs, and to the inclusion of several terms and conditions, particularly those related to instream flows and beneficial inflows; and

WHEREAS, the Texas Commission on Environmental Quality finds that the issuance of the permit is consistent with the goals and policies of the Texas CMP; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this permit;

NOW, THEREFORE, this Water Use Permit No. 5731 is issued to the Lower Colorado River Authority subject to the following terms and conditions:

1. IMPOUNDMENTS

Permittee is authorized to construct a series of off-channel reservoirs within Colorado, Wharton, and Matagorda Counties with a maximum combined storage capacity of 500,000 acre-feet of water and a maximum combined surface area of 25,408 acres.

2. USE

Permittee is authorized to divert an amount not to exceed 853,514 acre-feet of water per year from five diversion points described herein for storage in the off-channel reservoirs and subsequent diversion of a maximum of 327,591 acre-feet of water per year from those reservoirs for use anywhere within Permittee's currently authorized water service area within the Colorado, Brazos, Brazos-Colorado, Lavaca, and the Lavaca-Colorado river and coastal basins for municipal, industrial, and agricultural purposes.

3. DIVERSION

- A. Permittee is authorized to divert from the following authorized existing diversion points downstream of the USGS Gage (08161000) at Columbus:
- (i) At a point of the west bank of the Colorado River in the Samuel Kennelly Grant, Abstract 30, Colorado County, also being Latitude 29.516°N and Longitude 96.409°W, and authorized in Certificate of Adjudication No. 14-5434C.
 - (ii) At a point of the east bank of the Colorado River in the A.W. McLain and James McNair Grant, Abstract 33, Colorado County, also being Latitude 29.570°N and Longitude 96.402°W, and authorized in Certificate of Adjudication No. 14-5475.
 - (iii) At a point of the east bank of the reservoir on the Colorado River in the Sylvanus Castleman Grant, Abstract 11, Wharton County, also being Latitude 29.194°N and Longitude 96.072°W, and authorized in Certificate of Adjudication No. 14-5476.
 - (iv) At a point of the east bank of the reservoir on the Colorado River in the John F. Bowman and Henry Williams Grant, Abstract 9, Matagorda County, also being Latitude 28.984°N and Longitude 96.000°W, and authorized in Certificate of Adjudication No. 14-5476.
 - (v) At a point of the west bank of the reservoir on the Colorado River in the Thomas Cayce Grant, Abstract 14, Matagorda County, also being Latitude 28.981°N and Longitude 96.012°W, and authorized in Certificate of Adjudication No. 14-5476.
- B. Maximum combined diversion rate: 10,000 cfs (4,488,300 gpm).

4. CONSERVATION

Permittee shall implement a water conservation plan that continues to provide for the utilization of reasonable practices, techniques and technologies, for each category of authorized use, that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, improve efficiency in the use of water, and increase the recycling and reuse of water, so that a water supply is made available for future or alternative uses. The practices and technologies used shall be designed to achieve a level of efficiency of use for each category of authorized use that is equal to or greater than the level provided for in Permittee's most recent water conservation plan on file with the Commission as of the date of the issuance of this permit. In selecting practices, techniques, and technologies to be used, Permittee shall consider any appropriate best management practices that are identified in the most recent version of the Water Conservation Best Management Practices Guide produced by the Texas Water Development Board or any successor document. In every wholesale water contract or contract extension or renewal entered into on or after this permit is issued, Permittee shall continue to include a requirement that each successive wholesale customer develop and implement conservation measures consistent with the requirements of this provision. If the customer intends to resell the water, then the contract for resale of the water shall have water conservation requirements so that each successive wholesale customer in the resale of the water is required to implement water conservation measures consistent with the requirements of this provision. Those requirements include insuring that each successive wholesale customer will have a publicly accessible water conservation plan with specific, quantified 5-year and 10-year targets for water savings and will provide publicly accessible reports to the Permittee at five-year intervals summarizing the progress toward meeting those targets.

5. TIME PRIORITY

The time priority for this authorization is February 28, 2001.

6. SPECIAL CONDITIONS

A. Instream Flow Criteria.

- (i) Diversions authorized under this permit at diversion points upstream of the gage located on the Colorado River at Wharton, Texas (USGS Gage 0816200) shall only occur when: (a) streamflow at the Wharton gage is above the applicable flows listed in **Table 1**; and (b) diversions will not reduce streamflow at the Wharton gage to less than such flows.

Table 1: Instantaneous Instream Flow Criteria (in cfs) by Month at the Wharton Gage (USGS Gage 08162000) on the Colorado River

Month	Flow
January	838
February	906
March	1036
April	1011
May	1397
June	1512
July	906
August	522
September	617
October	749
November	764
December	746

- (ii) Any diversions under this permit at a diversion point located downstream of USGS Gage 08162000 at the Colorado River at Wharton, Texas, shall be subject to the passage beyond the diversion point of those instream flows identified in **Table 1** for the Wharton gage. The accounting plan shall include provisions establishing a mechanism for assessing compliance with this requirement.

B. Channel Maintenance.

A qualifying channel maintenance flow event is defined as an event that begins with a flow of at least 27,000 cfs measured at Columbus (USGS Gage 08161000) and that includes the flows at or below 27,000 cfs at Columbus during the 48-hour period following the initial 27,000 cfs flow. If a qualifying channel maintenance flow event has not occurred within the last 24 months and has not been allowed to pass the diversion points, Permittee's diversions during the first 48 hours after the qualifying channel maintenance flow event has reached the diversion point shall not reduce flow past the diversion point to less than the equivalent of 27,000 cfs at Columbus, adjusted for attenuation and other impacts between the Columbus gage and the diversion point. The accounting plan required by Special Condition 6.F. of this permit shall include provisions establishing a mechanism for assessing compliance with this requirement.

C. Beneficial Inflow Criteria

- (i) Diversions under this permit shall only occur when one or more of the Beneficial Inflow Criteria as defined in the following Special Condition 6.C.(ii), (iii), and (iv) are satisfied. Diversions which are authorized solely as a result of the specific criteria in Special Condition 6.C.(iv) are limited to the amounts specified in that Special Condition.
- (ii) Seasonal Inflow Criteria
 - (a) If the seven-day average salinity for the Shell Marker B Transect is 23 parts per thousand or less and the total Colorado River inflow to Matagorda Bay in the preceding 60 days exceeds the values in **Table 2**, the Beneficial Inflow Criteria shall be deemed satisfied for purposes of authorizing diversions under this permit, subject to the limitations in Special Condition 6.C.(ii)(b) (Severe Bay Drought).

Table 2. Seasonal Inflow Criteria	
Diversions occurring on any day during the months	Minimum preceding 60 day inflow
March, June	365,000 acre-feet
April, May	400,000 acre-feet
July, August, September, October	260,000 acre-feet
November, December, January, February	190,000 acre-feet

(b) Severe Bay Drought

- (1) "Cumulative Salinity Departure" (CSD) shall be calculated as set forth in Special Condition 6.F., Accounting Plan.
- (2) At any time that CSD exceeds 2200, the Seasonal Inflow Criteria in Special Condition 6.C.(ii)(a) shall not be used to satisfy the Beneficial Inflow Criteria.
- (3) CSD shall be reset to zero if any of the following events occur:

- (A) Total Colorado River inflows into Matagorda Bay for the preceding 90-day period ending at any time in the following months are greater than or equal to the following values:
 - i.) March-October: 430,000 acre-feet;
 - ii.) November-February: 410,000 acre-feet.
- (B) The average salinity at the Shell Marker B Transect over the preceding 90-day period is 15 ppt or less; or
- (C) Total Colorado River inflows to Matagorda Bay for the preceding two consecutive 90-day periods are greater than or equal to 310,000 acre-feet for each such period.

(4) If a CSD reset occurs from a value greater than 2200 as a result of Special Condition 6.C.(ii)(b)(3)(A) or (B), for a period of 60 days following the reset, in order for the Beneficial Inflow Criteria to be deemed satisfied using the Seasonal Inflow Criteria in Special Condition 6.C.(ii)(a), a Continuing Drought Reset Criterion must also be satisfied. The Continuing Drought Reset Criterion is satisfied if the Colorado River inflows to Matagorda Bay in the preceding 30 days ending at any time in the following months are greater than or equal to the following values:

- (A) March – October: 135,000 acre-feet;
- (B) November – February: 105,000 acre-feet.

- (iii) Low-Salinity Condition. If the 24-hour average salinity as calculated consistent with Special Condition 6.F., Accounting Plan, for the Shell Marker B Transect is 5 parts per thousand or less, for the following 24 hours, the Beneficial Inflow Criteria shall be deemed satisfied for purposes of authorizing diversions under this permit.
- (iv) High-Flow Scalping. If the flow at the diversion point exceeds 6000 cfs on a daily average basis, the Beneficial Inflow Criteria shall be deemed satisfied for purposes of authorizing diversions under this permit, subject to the following limitations:
 - (a) Permittee is authorized to divert, under this permit, on a daily average basis, an amount no greater than the percentages of flow shown in **Table 3**.

Table 3. Authorized diversion amounts under High-Flow Scalping

Status under Permittee's Adopted Drought Contingency Plan	Bay Condition	
	CSD < 3800	CSD > 3800
Firm customers have not been asked to implement mandatory restrictions	Divert up to 35% of flow above 6000cfs	No diversions
Firm customers have been asked to implement mandatory restrictions	Divert up to 60% of flow above 6000cfs	Divert up to 35% of flow above 6000cfs

- (b) If a high-flow pulse of at least 8000 cfs on a daily average basis has not occurred for two consecutive days at Wharton (USGS Gage 08162000) in the preceding 18 months, diversions as described in Special Condition 6.C.(iv)(a)

are authorized only to the extent that diversions do not reduce daily average flow below 8000 cfs at the diversion point.

(v) Adjustment to Seasonal Inflow Criteria

- (a) Within six (6) months after the tenth anniversary after Permittee initiates diversions under this permit, Permittee shall perform a Salinity Analysis as described in this Special Condition 6.C.(v)(a).
 - (1) Permittee shall compile a record of the daily salinity for the Shell Marker B Transect for the days in which the Seasonal Inflow Criteria in Table 2 under Special Condition 6.C.(ii)(a) were satisfied, with such daily values grouped into the periods March through June, July through October, and November through February. The record shall cover the period from January 1, 2005 through December 31 of the year prior to the analysis being triggered.
 - (2) For each of the periods March through June, July through October, and November through February, Permittee shall calculate the Percentage Exceedance, which shall be the percentage of days that the Shell Marker B Transect Salinity exceeded the values in **Table 4** out of the days in which the Seasonal Inflow Criteria in **Table 2** under Special Condition 6.C.(ii)(a) were satisfied.

Table 4. Salinity Trigger for Adjusting Seasonal Inflow Criteria

Period	Salinity
March through June	18.5 ppt
July through October	21.5 ppt
November through February	23 ppt

- (b) This analysis required under Special Condition 6.C.(v)(a) shall be repeated on a recurring basis every 10 years following the tenth anniversary after Permittee initiates diversions under this permit.
- (c) If the submission of a permit amendment application pursuant to Special Condition 6.E. occurs at least 5 years after the issuance of this permit, an initial Salinity Analysis as set out in Special Condition 6.C.(v)(a) shall be undertaken prior to the submission of that permit amendment application.
- (d) Permittee shall provide TCEQ with the results of any Salinity Analysis required by Special Condition 6.C.(v)(a)(2) or 6.C.(v)(c) and, shall also provide documentation of consultation with all entities named as parties to the contested case hearing on the application for this permit and any comments received from those entities regarding the Salinity Analysis.
- (e) The TCEQ may adjust the Seasonal Inflow Criteria in Table 2 based on the Salinity Analysis required by this Special Condition 6.C.(v) only if the Percentage Exceedance as described in Special Condition 6.C.(v)(a)(2) for any single period is greater than 30 percent. In making an adjustment, TCEQ may reallocate and, if appropriate, increase the Seasonal Inflow Criteria for the individual periods in **Table 2** under Special Condition 6.C.(ii)(a) such that the cumulative total of the Seasonal Inflow Criteria does not exceed the cumulative

total of the Seasonal Inflow Criteria in the original permit by more than 40,000 acre-feet. For purposes of any such adjustment, the months of March, April, May, and June shall be treated as a single period such that an increase of 20,000 acre-feet in each of those months, for example, would count as an increase in the Seasonal Inflow Criteria of 20,000 acre-feet. Other than an adjustment, if any, associated with consideration of a permit amendment application pursuant to Special Conditions 6.E. and 6.C.(v)(c), adjustments pursuant to this Special Condition shall be made only if Permittee's installed diversion capacity under this permit exceeds 2500 cfs or if total diversions pursuant to this Permit have exceeded 100,000 acre-feet in any calendar month. In determining whether any adjustment to the Seasonal Inflow Criteria is appropriate under this Special Condition, the Commission shall also consider, at minimum:

- (1) the documentation and comments submitted by Permittee pursuant to Special Condition 6.C.(v)(d) of this section; and
 - (2) any changes to the condition of Matagorda Bay, including changes to the configuration of the bay.
- (f) Other than adjustments under Special Condition 6.C.(v)(c), adjustments to the Seasonal Inflow Criteria as a result of this Special Condition 6.C.(v) may be made no more frequently than once every ten (10) years and shall be considered through an expedited public comment process similar to the process contemplated by Water Code § 11.1471(e-1). Any changes to the Seasonal Inflow Criteria as a result of this process shall be reflected in an amended permit.

D. Riparian Management Plan.

Permittee is required to develop a Riparian Management Plan (RMP) and submit it to the Executive Director for approval prior to diverting water under this permit. The RMP shall:

- (i) Identify public lands owned by Permittee between Columbus and the lower-most diversion point with significant riparian value; and
- (ii) Outline a plan for maintaining the riparian ecosystem functions of those lands, including provisions for long-term monitoring.

E. Reservoir Permitting and Construction.

- (i) Within ten (10) years of the initial issuance of this permit, and prior to diversion of water from the Colorado River pursuant to this permit or impoundment in the off-channel reservoir(s) authorized under this permit, Permittee shall apply for an amendment to this permit to either: (a) authorize specific off-channel reservoir(s); or (b) extend the time for filing an amendment to authorize specific off-channel reservoir(s) as set forth in this section.
- (ii) Any amendment to authorize specific off-channel reservoir(s) shall address, among other relevant issues, reasonable measures to minimize impacts to aquatic resources due to entrainment and impingement; mitigation requirements pursuant to Section 11.152, Tex.

Water Code; and issues related to the impacts, if any, to water quality or instream flows of any tributaries to the Colorado River affected by the proposed reservoir(s). At the time these reservoirs are permitted, time limitations for the commencement and completion of construction will be applied.

- (iii) Any application to amend this permit to extend the deadline for filing an amendment to authorize specific off-channel reservoir(s) shall set forth the justification for why: (a) the amendment to extend the time should be granted; and (b) why the permit should not be cancelled
- (iv) If Permittee has not applied for an amendment to this permit under Special Condition 6.E.(i) above within the specified deadline, Permittee shall forfeit the permit.
- (v) Any application for an amendment as described in this special condition shall require public notice and an opportunity to request a contested case hearing. If the Commission denies such an application for an amendment or an extension of time, the Commission may also concurrently determine whether to initiate cancellation proceedings under Texas Water Code, Chapter 11, Subchapter E for all or part of the permit.

F. Accounting Plan

- (i) Permittee shall include with any application under Special Condition 6.E.(i) to amend this Permit a proposed daily accounting plan that includes, at a minimum, the following:
 - (a) An accounting, by priority date and amount, for all water that will be diverted from the Colorado River into the off-channel reservoir(s) authorized under this Permit and requested permit amendment;
 - (b) An accounting, by date and amount, for all water diverted from the off-channel reservoir(s) authorized under this permit and any requested amendment;
 - (c) An accounting, by date and amount, of water allowed to pass downstream to ensure compliance with Special Conditions 6.A., 6.B., and 6.C related to protection of instream flows and beneficial inflows, including:
 - (1) A description of the stage data and rating information Permittee will use to determine compliance with the requirements of this Permit. In determining compliance with requirements under this permit, Permittee may rely on stage data obtained from the gaging station(s) jointly maintained by the U.S. Geological Survey (USGS) and Permittee. If the ratings used to convert stage to flow published by Permittee and the USGS are not identical at the time these requirements are implemented by Permittee, Permittee may exercise its discretion in relying on the latest updated rating of the gage(s).
 - (2) For purposes of determining compliance with Special Condition 6.B. ("Channel Maintenance"), flows in the Colorado River shall be measured at Columbus (USGS Gage 08161000) and the nearest USGS Gage located upstream of the actual diversion point of water

appropriated under this permit, with appropriate adjustments, as set forth in the accounting plan, that account for travel time, downstream diversions, and lateral inflows reasonably estimated by Permittee, pursuant to a method set forth in the accounting plan, to have occurred along the Colorado River downstream of the Columbus gage and upstream of the diversion point(s) used by Permittee.

- (3) For purposes of determining compliance with Special Condition 6.C., ("Beneficial Inflows Criteria"), the plan shall include a description of how Permittee will determine Colorado River inflow to Matagorda Bay, including the circumstances under which Permittee will use flow measured at Bay City (USGS Gage 8162500) or, when appropriate, at Permittee's Lane City gage.
- (d) An accounting of the salinity measurements and calculations necessary to determine compliance with Special Conditions 6.C.(ii), (iii) and (v), subject to the following requirements:
- (1) Beginning at such time that Permittee initiates diversions under this permit, Permittee shall measure salinity on at least an hourly basis using two salinity monitoring instruments at the West Bay Tripod and two salinity monitoring instruments at Shell Marker B.
 - (2) Instrument Reliability. If the daily average salinity varies by greater than 3 parts per thousand (ppt) between two instruments at the same location, Permittee will inspect the instruments and repair or replace the instruments, if necessary, within three business days.
 - (3) The calculation of the average salinity across the Shell Marker B Transect shall be as follows:
 - (A) A daily average salinity value shall be calculated for each individual salinity monitoring instrument.
 - (B) The daily average salinity at the West Bay Tripod shall be calculated as the average of the daily average salinity for the two salinity instruments at that location; and the daily average salinity at Shell Marker B shall be calculated as the average of the daily average salinity for the two salinity instruments at that location.
 - (C) The Shell Marker B Transect average salinity shall be calculated as the average of the daily average salinity at the West Bay Tripod and Shell Marker B locations. However, if the salinity instruments at either the West Bay Tripod or Shell Marker B are outside of the range specified under Special Condition 6.F.(i)(d)(2), the transect salinity shall be established as the daily average salinity at the other location.
 - (D) For purposes of determining the 24-hour average salinity under Special Condition 6.C.(iii), the accounting plan shall specify the

time of day at which the 24-hour period begins and ends.

- (e) An accounting of Permittee's calculation of Cumulative Salinity Departure, for purposes of Special Conditions 6.C.(ii)(b) and 6.C.(iv), subject to the following requirements:
 - (1) When average daily salinity at the Shell Marker B Transect exceeds 23 ppt, the absolute value of the difference between the salinity value and 23ppt shall be added to a running total of "Cumulative Salinity Departure" (CSD).
 - (2) When average daily salinity is below 23ppt, the absolute value of the difference shall be subtracted.
 - (3) If the resulting CSD would otherwise be a negative value, it shall be set to zero.
 - (4) All CSD calculations should be done on a daily basis.
- (ii) Permittee shall file with any submission of a proposed accounting plan or any proposed substantive revision thereof, documentation of consultation with all entities named as parties to the contested case hearing on the application for this permit and of any comments received from those entities on the contents of the accounting plan. The Executive Director, in considering or ruling on the adequacy of the accounting plan or any proposed substantive revision, shall consider those comments.
- (iii) Permittee shall maintain the approved daily accounting plan in electronic format and, except as may be restricted by other local, state, or federal law, make it available to the general public during normal business hours and to the Executive Director upon request.
- (iv) If at any time Permittee intends to store other waters, either from the Colorado River (authorized by other water rights) or from other previously authorized sources, for subsequent storage in and diversion from the off-channel reservoir(s) authorized under this permit, Permittee shall submit, and receive approval by the Executive Director, of a modification to the accounting plan that accounts for those additional waters prior to storing or using such supplies.
- (v) If Permittee seeks to modify its accounting plan, Permittee shall submit a request to the Executive Director for a determination of whether such modification requires a permit amendment, along with copies of the appropriate documents reflecting such modifications. Any modifications to the accounting plan that the Executive Director determines would change the permit terms must be submitted in the form of an application to amend the permit. If a permit amendment is required, Permittee shall not make any diversions pursuant to the modified accounting plan until a permit amendment is issued.
- (vi) Should Permittee fail to maintain the accounting plan or timely notify the Executive Director of any modifications to the accounting plan or file an application to amend the Permit, Permittee shall immediately cease all diversions pursuant to this Permit until Permittee corrects the records, or files with the Executive Director the amended plan or, if necessary, application to amend the permit.

G. Junior Priority

Pursuant to agreements entered into by Permittee, this permit is junior in priority to any claim by the Colorado River Municipal Water District (CRMWD) or Brown County Water Improvement District No. 1 (BCWID) on surface waters of the Colorado River watershed imported into or originating in and above O.H. Ivie Reservoir and Lake Brownwood, as well as the existing rights of any other holder of water rights above Lake Brownwood or O.H. Ivie Reservoir and shall not constitute any limitation upon the granting of new permits to CRMWD or BCWID or amendments to existing water rights of the CRMWD consisting of Certificate Nos. 14-1002, as amended, 14-1008, as amended, 14-1012 and 14-1018 and Permits 3676, as amended, 5457, and 5480, or amendments to the existing water right of BCWID consisting of Certificate No. 14-2454 by the Commission for the impoundment, diversion, and use, within the Colorado River watershed, of waters of the Colorado River imported into or originating in or above O.H. Ivie Reservoir and Lake Brownwood.

H. Monitoring and Data Availability

- (i) Monitoring. Upon issuance of this permit, Permittee shall:
 - (a) Implement a program to measure salinity on at least an hourly basis at both the West Bay Tripod and Shell Marker B;
 - (b) Implement a program to measure salinity on at least an hourly basis at a representative location within the Colorado River delta; and
 - (c) Implement a program to obtain salinity data approximately every thirty (30) days at three points along a transect proximate to Mad Island, or on at least an hourly basis at a single location proximate to Mad Island.
- (ii) Data Availability
Permittee shall maintain the data and analysis required pursuant to this Permit in electronic format and, except as may be restricted by other local, state, or federal law, make it available to the general public during normal business hours and to the Executive Director upon request.

I. Reopener

- (i) Consistent with and subject to the conditions stated in Texas Water Code §11.147(e-1), the Commission may adjust the conditions included in this permit to provide for protection of instream flows or beneficial inflows, if the Commission determines, through an expedited public comment process, that such an adjustment is appropriate to achieve compliance with applicable environmental flow standards adopted under Texas Water Code §11.1471.
- (ii) Any voluntary adjustments made pursuant to Special Condition 6.C.(v) that increase the Seasonal Inflow Criteria in Table 2, shall entitle Permittee to an appropriate credit for the benefits of such adjustments as required by Texas Water Code § 11.147 (e-2).

This permit is issued subject to all superior and senior water rights in the Colorado River Basin.

Permittee agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this permit.

All other matters requested in the application which are not specifically granted by this permit are denied.

This permit is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

For the Commission

Date issued:

WATER USE PERMIT
TO APPROPRIATE STATE WATER

APPLICATION NO. 5731

PERMIT NO. 5731

TYPES §§11.121, 11.085

Owner:	Lower Colorado River Authority	Address:	P.O. Box 220 Austin, Texas 78767
Filed:	February 28, 2001	Granted:	
Purpose:	Municipal, Industrial, and Agriculture	Counties:	Colorado, Wharton, Matagorda
Watercourse:	Moores Branch, tributary of the Colorado River and the Colorado River	Watershed:	Colorado River Basin

WHEREAS, the Lower Colorado River Authority (LCRA), applicant, seeks authorization to divert, store, and use those excess flood waters and those unappropriated flows of the Colorado River Basin downstream of O.H. Ivie Reservoir and downstream of Lake Brownwood in an amount not to exceed 853,514 acre-feet of water per year; and

WHEREAS, the applicant seeks to divert and use the requested appropriation of water at nine existing diversion points downstream of the USGS Gage (08161000) at Columbus in Colorado County at a maximum combined diversion rate of 40,000 cfs; and

WHEREAS, the applicant seeks to construct an unspecified number of off-channel reservoirs within Colorado, Wharton, and Matagorda Counties with a maximum combined storage capacity of 500,000 acre-feet of water and maximum combined surface area of 25,408 acres; and

WHEREAS, in order to estimate the maximum total surface area of the reservoir, the maximum evaporative losses from the reservoirs, and the maximum total yield from the reservoirs, the applicant indicates that for those purposes assumptions were made that at the maximum normal operating level of the reservoirs the approximate depth of the reservoirs would be no more than 45 feet and no less than 20 feet; and

WHEREAS, the applicant indicates that the estimated combined maximum annual evaporation from the off-channel reservoirs would be 82,264 acre-feet of water, based on a maximum surface area estimated of the reservoirs and assuming an approximate water depth of 20 feet in the reservoirs. The maximum combined annual diversion of water from the off-channel reservoirs would not exceed 327,591 acre-feet of water based on an assumed maximum approximate water depth of 45 feet within the reservoirs, at the maximum normal operating level, with a maximum combined diversion rate from the off-channel reservoir of 4,000 cfs (1,785,200 gpm). The applicant estimates that the maximum monthly demand from the off-channel reservoirs

would be 110,000 acre-feet based on an assumed capability of diverting one third of the annual total of 327,591 acre-feet in a single month; and

WHEREAS, the applicant is seeking authorization to use the water requested in this application anywhere within its authorized water service area within the Colorado, Brazos, Brazos-Colorado, Lavaca, and the Lavaca-Colorado river and coastal basins and/or such other areas that hereinafter may be authorized by law for municipal, industrial, and agricultural purposes; and

WHEREAS, the Lower Colorado River Authority has a Commission-approved Water Management Plan that provides for the operation of Buchanan Dam (Lake Buchanan) and Mansfield Dam (Lake Travis) as well as provides for the protection of fish and wildlife habitats, instream uses, and beneficial inflows to the Lavaca-Tres Palacios Estuary; which Water Management Plan has been amended numerous times, and which could be amended in the future to include operation of the water right granted herein, as well as special conditions of this permit designed to protect environmental interests, and as additional information, studies, and scientific knowledge are developed, the future amendments to the Water Management Plan could amend the special conditions of this permit; and

WHEREAS, this application is subject to the Texas Coastal Management Program (CMP) and must be consistent with the CMP goals and policies; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, the Executive Director recommends special conditions be added for the protection of instream uses; and

WHEREAS, the applicant requests that a special condition be included to address the priority of this right in relation to Colorado River Municipal Water District and Brown County Water Improvement District No. 1; and

WHEREAS, the Texas Commission on Environmental Quality finds that the issuance of the permit is consistent with the goals and policies of the Texas CMP; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this permit;

NOW, THEREFORE, this Water Use Permit No. 5731 is issued to the Lower Colorado River Authority subject to the following terms and conditions:

1. IMPOUNDMENTS

Permittee is authorized to construct a series of off-channel reservoirs within Colorado, Wharton, and Matagorda Counties with a maximum combined storage capacity of 500,000 acre-feet of water and a maximum combined surface area of 25,408 acres.

2. USE

Permittee is authorized to divert an amount not to exceed 853,514 acre-feet of water per year from nine diversion points described herein for storage in the off-channel reservoirs and subsequent

diversion of a maximum of 327,591 acre-feet of water per year from those reservoirs for use anywhere within Permittee's authorized water service area within the Colorado, Brazos, Brazos-Colorado, Lavaca, and the Lavaca-Colorado river and coastal basins for municipal, industrial, and agricultural purposes.

3. DIVERSION

A. Permittee is authorized to divert from the following authorized existing diversion points downstream of the USGS Gage (08161000) at Columbus:

- (i) At a point of the west bank of the Colorado River in the Samuel Kennelly Grant, Abstract 30, Colorado County, also being Latitude 29.516°N and Longitude 96.409°W, and authorized in Certificate of Adjudication No. 14-5434C.
- (ii) At a point of the west bank of the Colorado River in the Cornelius H. Vanderveer Grant, Abstract 95, Matagorda County, also being Latitude 28.776°N and Longitude 95.997°W, and authorized in Certificate of Adjudication No. 14-5437.
- (iii) On the perimeter of the off-channel reservoir in the John Raney Grant, Abstract 80; the Cornelius H. Vanderveer Grant, Abstract 95; and the Abram Sheppard Survey, Abstract 383, Matagorda County, also being Latitude 28.793°N and Longitude 96.051°W, and being the principle reservoir authorized in Certificate of Adjudication No. 14-5437.
- (iv) On the perimeter of the off-channel reservoir in the John Raney Grant, Abstract 80, Matagorda County, also being Latitude 28.797°N and Longitude 96.046°W, and being the second reservoir authorized in Certificate of Adjudication No. 14-5437.
- (v) At a point of the east bank of the Colorado River in the A.W. McLean and James McNair Grant, Abstract 33, Colorado County, also being Latitude 29.570°N and Longitude 96.402°W, and authorized in Certificate of Adjudication No. 14-5475.
- (vi) On the perimeter of Eagle Lake located on Moores Branch, tributary of the Colorado River, Colorado County, also being Latitude 29.559°N and Longitude 96.335°W, and authorized in Certificate of Adjudication No. 14-5475.
- (vii) At a point of the east bank of the reservoir on the Colorado River in the Sylvanus Castleman Grant, Abstract 11, Wharton County, also being Latitude 29.193°N and Longitude 96.072°W, and authorized in Certificate of Adjudication No. 14-5476.
- (viii) At a point of the east bank of the reservoir on the Colorado River in the John F. Bowman and Henry Williams Grant, Abstract 9, Matagorda County, also being Latitude 28.984°N and Longitude 95.999°W, and authorized in Certificate of Adjudication No. 14-5476.
- (ix) At a point of the west bank of the reservoir on the Colorado River in the Thomas Cayce Grant, Abstract 14, Matagorda County, also being Latitude 28.980°N and Longitude 96.012°W, and authorized in Certificate of Adjudication No. 14-5476.

B. Maximum combined diversion rate: 40,000 cfs (17,952,000 gpm).

4. CONSERVATION

Permittee shall implement a water conservation plan that provides for the utilization of those practices, techniques and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every wholesale water contract entered into, on or after the effective date of this amendment, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water shall have water conservation requirements so that each successive wholesale customer in the resale of the water be required to implement water conservation measures.

5. TIME PRIORITY

The time priority for this authorization is February 28, 2001.

6. SPECIAL CONDITIONS

- A. Diversions shall only occur under this permit when flow levels in the Colorado River are above the Target Flows listed in Table 1 and diversions will not reduce streamflow to less than those Target Flows in sections of the Colorado River as measured at Columbus and Wharton;

Table 1: Instantaneous Target Flows (in cfs) by Month for Downstream Reaches of the Colorado River		
Month	Eagle Lake (Columbus)	Egypt (Wharton)
January	300	240
February	340	280
March	500	360
April	500	390
May	820	670
June	660	540
July	300	240
August	200	160
September	320	260

October	380	310
November	290	240
December	270	220

- B. Unless a peak flow event with a duration of at least 48 hours from the first rise of flow above a base flow and with a flow of at least 27,000 cfs during the peak flow event, has occurred within the previous 24 months or rainfall has occurred in the basin that is reasonably forecast by Permittee to result in a peak flow event of at least 48 hours of duration with a flow of at least 27,000 cfs during the peak flow event, Permittee shall make no diversion that will reduce flow of this event to less than 27,000 cfs at Columbus.
- C. Provided that the flow values in Special Conditions numbers 1 and 2 have been met, water withdrawals authorized under this permit may be diverted into off-channel reservoirs and stored without further use until the end of the accounting month, as identified in the Commission-approved LCRA Water Management Plan in effect at the time of the diversions. Regardless of water levels in the Highland Lakes, if the requirements for the Colorado River portion of the monthly Target Freshwater Inflow requirements for the Matagorda Bay are not fully satisfied, Permittee shall release enough water stored in reservoirs authorized under this permit during the prior month to meet the freshwater inflow requirements, up to all water impounded in such reservoirs during that prior accounting month.
- D. Permittee shall implement measures to minimize impacts to aquatic resources due to entrainment and impingement including but not limited to the installation of screens at the diversion facilities with a mesh size of 0.25 inches or smaller and a maximum flow-through screen velocity of 0.5 feet per second.
- E. Permittee is required to develop a Riparian Management Plan (RMP) and submit it to the Executive Director for approval prior to diverting water under this permit. Within six months of approval by the Executive Director, the Permittee shall seek an amendment to the LCRA Management Plan to incorporate the RMP into the LCRA Management Plan. The RMP shall:
- (i) Identify public lands between Columbus and the lower-most diversion point with significant riparian value; and
 - (ii) Outline a plan for maintaining the riparian ecosystem functions of those lands, including provisions for long-term monitoring.
- F. For purposes of these special conditions, flows in the Colorado shall be measured at the USGS Gage (08161000) at Columbus and the USGS Gage (08162000) at Wharton.
- G. Prior to diversion of water from the Colorado River and impoundment in the off-channel reservoir(s), Permittee shall apply for and be granted authorization for specific off-channel reservoir(s). At the time these reservoirs are permitted, time limitations for the commencement and completion of construction will be applied.
- H. Prior to diversion of water from the Colorado River, Permittee shall submit and receive approval by the Executive Director, of an accounting plan (by priority date and amount) for

all water that will be diverted from the Colorado River into the reservoir(s) pursuant to all of the Permittee's authorizations. Should the Permittee seek to store other waters, either from the Colorado River (authorized by other water rights) or from groundwater sources, for subsequent storage in and diversion from the off-channel reservoir(s), Permittee shall submit, and receive approval by the Executive Director, of a modification to the accounting plan that tracks those additional waters.

- I. This permit is junior in priority to any claim by the Colorado River Municipal Water District (CRMWD) or Brown County Water Improvement District No. 1 (BCWID) on surface waters of the Colorado River watershed imported into or originating in and above O.H. Ivie Reservoir and Lake Brownwood, as well as the existing rights of any other holder of water rights above Lake Brownwood or O.H. Ivie Reservoir and shall not constitute any limitation upon the granting of new permits to CRMWD or BCWID or amendments to existing water rights of the CRMWD consisting of Certificate Nos. 14-1002, as amended, 14-1008, as amended, 14-1012 and 14-1018 and Permits 3676, as amended, 5457, and 5480, or amendments to the existing water right of BCWID consisting of Certificate No. 14-2454 by the Commission for the impoundment, diversion, and use, within the Colorado River watershed, of waters of the Colorado River imported into or originating in or above O.H. Ivie Reservoir and Lake Brownwood.

This permit is issued subject to all superior and senior water rights in the Colorado River Basin.

Permittee agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this permit.

All other matters requested in the application which are not specifically granted by this permit are denied.

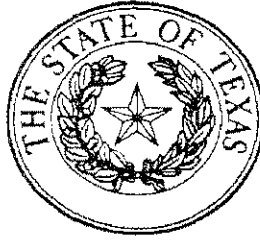
This permit is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

For the Commission

Date issued:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER
GRANTING THE APPLICATION OF THE LOWER COLORADO RIVER
AUTHORITY FOR WATER RIGHTS PERMIT NO. 5731 TO DIVERT, STORE, AND
USE WATER FROM THE COLORADO RIVER BASIN
TCEQ DOCKET NO. 2006-1819-W
SOAH DOCKET NO. 582-08-0689**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of the Lower Colorado River Authority (LCRA) for Water Rights Permit No. 5731 to divert, store, and use water from the Colorado River Basin. A Proposal for Decision (PFD) was presented by William G. Newchurch, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On March 31, 1999, LCRA filed with the Texas Commission on Environmental Quality (Commission) an application seeking authorization to divert, store, and use those excess flood waters and those unappropriated flows of the Colorado River downstream of Lake Brownwood in an amount not to exceed 853,514 acre-feet of water per year.
2. The application was deemed administratively complete on February 28, 2001.
3. Notice of the application was published on September 5, 2001, in (1) the *Wharton Journal-Spectator*, a regularly published newspaper in Wharton County; (2) the *Austin American Statesman*, a regularly published newspaper in Travis County, Texas; (3) the

San Saba News, a regularly published newspaper in San Saba County, Texas; (4) the *Llano News*, a regularly published newspaper in Llano County, Texas; (5) the *Clyde Journal*, a regularly published newspaper in Callahan County, Texas; (6) the *Colorado County Citizen*, a regularly published newspaper in Colorado County, Texas; and (7) the *Blanco County News*, a regularly published newspaper in Blanco County, Texas.

4. Notice of the application was published on September 6, 2001, in (1) the *Ballinger Ledger*, a regularly published newspaper in Runnels County, Texas; and (2) the *Brady Standard-Herald*, a regularly published newspaper in McCulloch County, Texas.
5. Notice of the application was published on September 7, 2001 in the *Daily Tribune*, a regularly published newspaper in Matagorda County, Texas.
6. Notice of the application was published on September 8, 2001 in the *Bastrop Advertiser*, a regularly published newspaper in Bastrop County, Texas.
7. Notice of the application was published on September 11, 2001, in (1) the *Fayette County Record*, a regularly published newspaper in Fayette County, Texas; and (2) the *Brownwood Bulletin*, a regularly published newspaper in Brown and Coleman Counties, Texas.
8. Notice of the application was mailed by the Chief Clerk of the Commission on August 22, 2001 to navigation districts and water rights holders in the Colorado Basin.
9. The Executive Director (ED) of the Commission proposed a draft water use permit based on LCRA's application.
10. On September 19, 2007, the Commission considered the hearing requests on the application and issued an interim order granting hearing requests and referring the application to SOAH for a contested case hearing.
11. Notice of the public hearing on the application was mailed on November 14, 2007, by the Chief Clerk of the Commission to LCRA and all interested persons.

12. A preliminary hearing was held on December 3, 2007. Designated as parties (Parties) at the preliminary hearing were LCRA, the ED, the Office of the Public Interest Counsel (OPIC), STP Nuclear Operating Company (STPNOC), Texas Parks and Wildlife Department (TPWD), the City of Austin (Austin), the Coastal Conservation Association (CCA), the Matagorda Bay Foundation (MBF), the National Wildlife Federation (NWF), and the Sierra Club. The CCA, MBF, NWF, and the Sierra Club were aligned and are collectively referred to as the "Conservation Alignment."
13. On April 25, 2008, LCRA, the Conservation Alignment, TPWD, STPNOC, and Austin requested and were granted the first of several abatements of the procedural schedule to provide additional time to discuss the possibility of settlement. The abatements were not opposed by the ED or OPIC.
14. During the abatements, LCRA, the Conservation Alignment, and TPWD worked extensively to resolve their disputes. LCRA had previously settled with Austin and STPNOC.
15. On July 16, 2010, after two years of negotiations, LCRA, the Conservation Alignment, TPWD, STPNOC, and Austin (Settling Parties) announced they had reached an agreement to resolve their disputes regarding LCRA's application.
16. The procedural schedule was abated until September 30, 2010, for the purpose of allowing the Parties to meet and determine if the ED and OPIC could support the proposed settlement terms and conditions. OPIC now supports the settlement.
17. After several attempts to engage the ED's staff in settlement negotiations to identify and resolve any disputed issues, on October 1, 2010, the Settling Parties indicated that little progress had been made and thus requested that a prehearing conference be scheduled.
18. On October 26, 2010, the Settling Parties, along with OPIC, entered into a Rule 11 Agreement, admitted into evidence as Exhibit Q, which states that LCRA agrees to support the issuance of the Settlement Draft Permit No. 5731 and that the other Settling Parties and OPIC agree not to oppose the issuance of the Settlement Draft Permit

No. 5731, and agree to support the inclusion of the provisions included in the Settlement Draft Permit No. 5731 in any permit that might be issued.

19. On October 27, 2010, a prehearing conference was held at which the Parties provided their respective positions regarding the Settlement Draft Permit No. 5731, and the ED's Draft Permit No. 5731, which was entered into evidence as Exhibit R.
20. The Conservation Alignment and TPWD oppose issuance of the ED's Draft Permit.
21. LCRA supports the issuance of the Settlement Draft Permit No. 5731, and the other Settling Parties do not oppose the issuance of the Settlement Draft Permit No. 5731 and support the inclusion of the provisions included in the Settlement Draft Permit No. 5731 in any permit that might be issued.
22. The ED supports the issuance of the ED's Draft Permit No. 5731 and opposes the issuance of the Settlement Draft Permit No. 5731.
23. The primary substantive differences between the ED's Draft Permit No. 5731 and the Settlement Draft Permit No. 5731 relate to environmental flow permit conditions developed pursuant to TEX. WATER CODE ANN. §§ 11.147, 11.150, and 11.152.
24. The Settlement Draft Permit No. 5731 also differs from the ED's Draft Permit No. 5731 in that the Settlement Draft Permit No. 5731: (a) reduces the number of authorized diversion points from nine to five; (b) decreases the maximum combined rate of diversion from 40,000 cubic feet per second (cfs) to 10,000 cfs; (c) includes additional water conservation requirements; and (d) includes additional off-channel reservoir permitting and construction requirements.
25. None of the Settling Parties or OPIC disputes, for the purposes of this proceeding, that the Settlement Draft Permit No. 5731 uses the best science available, reflects an appropriate balance under TEX. WATER CODE § 11.147, and meets the requirements of TEX. WATER CODE §§ 11.147, 11.150, and 11.152.

26. None of the Settling Parties or OPIC disputes, for the purposes of this proceeding, that the Settlement Draft Permit No. 5731 is consistent with the goals and policies of the Texas Coastal Management Program and that the Settlement Draft Permit No. 5731 complies with the requirements of the Texas Water Code and applicable rules of the Commission relating to permits to use state water.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over permits to use state water and to issue Settlement Draft Permit No. 5731 under TEX. WATER CODE ANN. §§ 5.013 and 11.121.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, under TEX. GOVERNMENT CODE ANN. Ch. 2001 and 2003.
3. LCRA published notice, and the Commission mailed notice to navigation districts and water rights holders in the Colorado Basin as required by TEX. WATER CODE ANN. § 11.132 and Chapter 295 of Title 30 of Texas Administrative Code.
4. Parties received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. LCRA's Application, as modified by and under the conditions set out in the Settlement Draft Permit No. 5731 and the Settlement Draft Permit No. 5731, comply with the requirements of Texas Water Code Ch. 11 and other applicable laws and Commission rules relating to applications for and permits to use state water.
6. The Commission has the authority to issue the Settlement Draft Permit No. 5731 pursuant to TEX. WATER CODE ANN. §§ 11.134 and 11.135.
7. LCRA's application, as modified by and under the conditions set out in the Settlement Draft Permit No. 5731, should be granted and Settlement Draft Permit No. 5731 should be issued.

ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. LCRA's application, as modified by and under the conditions set out in the Settlement Draft Permit No. 5731, is granted and the attached Settlement Draft Permit No. 5731 is issued.
2. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
3. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Gov't Code § 2001.144.
4. The Commission's Chief Clerk shall forward a copy of this Order to each of the parties.
5. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman
For the Commission